

**REMARKS**

Subject to the Examiner's entry of the amendments herein, claims 1, 4, 7-10, 13, 16 and 23 are pending in the application. Claims 1, 7, 10, 16 and 23 have been amended. Claims 2 and 11 have been cancelled. New claims 26-30 have been added. In the above Office Action the Examiner has rejected claims 1, 4, 7-10, 13, 16 and 23 in the manner discussed below.

**Finality of Office Action**

According to the MPEP 706.07(a), "[u]nder present practice, second or any subsequent [Office] actions on the merits shall be final, except where the examiner introduces a new ground of rejection *that is [not] necessitated by applicant's amendment of the claims...*" (emphasis added). The purpose of MPEP 706.07(a) is to prevent an Examiner from applying new prior art without at least giving the Applicant one chance to change the focus of the claims to avoid the newly applied prior art.

In the December 8, 2006, Response ("previous response") to the August 11, 2006, Office Action ("previous Office Action") that immediately precedes the Final Office Action ("current Office Action") referenced above and at issue in this Response, claim 6 was merely re-written in independent form with no additional, substantive amendments. Thus, the final rejection of claim 6 by the Examiner in the current Office Action using newly discovered prior art is improper because merely re-writing a dependent claim in independent form does not necessitate a new ground of rejection per the MPEP 706.07(a). Applicant therefore respectfully requests that the Examiner withdraw the finality of the current Office Action to which this Response is directed.

Furthermore, because the finality of the current Office Action is improper and premature, Applicant respectfully requests that all fees associated with the Request for Continued Examination ("RCE") that is being filed in response to the current Office Action be returned to the Applicant. Moreover, Applicant respectfully requests that this Response be treated as a response to the current Office Action as if it were non-final and not a response accompanying a RCE. Applicant respectfully submits that the RCE was necessitated by the Examiner's unwillingness to withdraw the finality of the current Office Action. Applicant's patent agent made several attempts to reach the Examiner and his supervisor in order to discuss the finality of the current Office Action; however the Examiner and his supervisor did not return the

Applicant's phone calls. Consequently, an RCE or continuation must be filed to avoid abandonment of the current application. In view of the new rules limiting Applicant to a single RCE, Applicant respectfully submits that the improper finality of the current Office Action greatly hinders the ability of Applicant to prosecute their patent to the fullest extent possible.

#### **Claim Rejections Under 35 U.S.C. §103(a)**

Claims 1, 4, 7-10, 13, 16 and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over OPC Overview (Version 1) in view of Crater et al (U.S. Patent 7,146,408).

##### Independent Claims 1, 7, 10, 16 and 23

In response to this rejection, Applicants have amended Claim 1 to include the subject matter of claim 2. Specifically, Applicants have amended Claim 1 to recite:

1. (currently amended) A method for communicating with a factory automation control system via remote computers, the remote computers including an object container, the method comprising:

requesting, via at least one of the remote computers, factory automation control system information, wherein the factory automation control system is configured to control an industrial process, and wherein the requesting includes requesting a web page, the web page being hosted by the factory automation control system;

receiving, from the factory automation control system, the factory automation control system information at the object container; ~~and~~

running an ActiveX control within a web browser in the object container so as to enable a user at the at least one of the remote computers to view the received factory automation control system information via the web page;

generating control instructions with the ActiveX control; and  
sending the control instructions to the control system, wherein the control instructions effect changes in the industrial process.

Support for these amendments can be found in, for example, cancelled Claim 2.

Applicants submit that these amendments further clarify the patentably distinct differences between Claim 1 and OPC Overview in view of Crater et al. In particular Applicants submit that the combination of OPC Overview and Crater et al. neither teaches nor suggests each limitation of amended Claim 1. For example, as amended, Claim 1 recites: "sending the control instructions to the control system, wherein the control instructions effect changes in the industrial process." This amendment was drawn directly from cancelled Claim 2. The Office Action contends that this limitation is taught by Crater et al. at column 5, line 13 through column 6, line 27, and at column 12, lines 30-50. However, line 13 of column 5 through line 27 of column 6

merely describe the use of a web browser to access information via the Internet, and lines 30-50 of column 12 are directed to a series of claims pertaining to the display of data via a web browser.

Moreover, the Office Action cannot rely on generally pointing to the references to support a claim that each limitation is taught. Establishing that all the claim limitations are taught requires that, for references like Crater et al., "the particular part relied on must be designated as nearly as practicable." See Rule 1.104 (c)(2). The Office Action, however, does not show with any specificity what construct or language from Crater et al. corresponds to sending control instructions from at least one of the remote computers to the control system, wherein the control instructions effect changes in the industrial process. Without more the Office Action has failed to meet the standard for a prima facie case of obviousness and the rejection should be withdrawn.

Amendments have also been made to independent claims 7, 10, 16 and 23 so that they include similar, although not identical, language to Claim 1. These amendments draw support from, at least, cancelled claim 11. To the extent the Examiner relies on the same reasons set forth for rejecting Claim 1 in rejecting claims 7, 10, 16 and 23, Applicants again submit that a rejection of claims 7, 10, 16 and 23 is not proper for the reasons stated above.

Based on the above analysis, Applicants submit independent claims 1, 7, 10, 16 and 23 are novel, non-obvious and in condition for allowance. In addition, Applicants submit dependent claims 4, 8, 9 and 13 are allowable, at least, by virtue of being dependent from allowable independent claims.

#### **New Claims 26-30**

Applicant has added new claims 26-30. In light of the above described arguments and amendments, and/or support in the specification, these claims should likewise be in condition for allowance. Applicant therefore requests that new claims 26-30 also be allowed.

#### **CONCLUSION**

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments and remarks

made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicant respectfully requests consideration of the remarks herein prior to further examination of the above-identified application. The undersigned would of course be available to discuss the present application with the Examiner if, in the opinion of the Examiner, such a discussion could lead to resolution of any outstanding issues.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

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Respectfully Submitted

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